

Message Text

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ORIGIN EB-07

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FMC-01 INR-07 NSAE-00 SAL-01 CG-00 DLOS-06 OES-06
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APPROVED BY EB/TCA/MA:RK BANK
MARAD:FRAITER/JHOEN (INFO)
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NEA/AFN:DJAMESON
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FM SECSTATE WASHDC
TO AMEMBASSY ALGIERS

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E.O. 11652:N/A

TAGS:EFIN, EWWT, AG, US, ETRN

SUBJECT: GOA REQUEST THAT 50 PER CENT OF US/ALGERIAN
TRADE BE RESERVED FOR ALGERIAN FLAG VESSELS

REF: ALGIERS 0028

SUMMARY: REPORTS OF MEETING OF ALGERIAN SHIPPING OFFICIALS
WITH FMC AND MARAD INDICATE GENERAL DISCUSSIONS TOOK PLACE
CONCERNING PROCEDURES FOR APPROVAL OF SECTION 15 AGREEMENTS
AND WAIVERS OF EXIMBANK CARGO RESTRICTIONS. THERE
WAS NO DISCUSSION OF ALGERIAN INTENT TO IMPOSE UNILATERAL
ALGERIAN CARGO PREFERENCE MEASURES. SUMMARY OF U.S.
POLICY RE P.R.17, CARGO PREFERENCE AND POOLING AGREEMENTS
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TO BE PASSED TO GOA OFFICIALS FOLLOW. END SUMMARY.

1. ON DECEMBER 13 ALGERIAN OFFICIALS, AISSA HENNI,
DEPUTY DIRECTOR OF THE MERCHANT MARINE, AND AMAR MOKHTAR,
DIRECTOR OF MARITIME TRANSPORT FOR ALGERIAN NATIONAL
SHIPPING LINE (CNAN) MET WITH OFFICIALS FROM FEDERAL
MARITIME COMMISSION (FMC) AND MARITIME ADMINISTRATION

(MARAD). THEY WERE ACCCOMPANIED BY OFFICIALS OF LYKES BROS. STEAMSHIP COMPANY, ALGERIAN SHIPPING AGENTS IN U.S. GULF. MEETING AT FMC WAS TO DISCUSS POSSIBILITY AND PROCEDURES FOR FMC APPROVAL UNDER SECTION 15 OF SHIPPING ACT OF 1916 TO ALLOW THE ALGERIANS A GREATER SHARE OF THE BILATERAL CARGOES. FMC OFFICIALS OUTLINED STEPS NECESSARY FOR FMC APPROVAL OF ANY AGREEMENT AND STATED THAT THERE WAS NO GUARANTEE OF APPROVAL SHOULD ONE BE SUBMITTED. FMC RECALLS NO DISCUSSION OF ALGERIAN INTENT TO UNILATERALLY IMPOSE MEASURES GIVING GREATER CARGO SHARE TO CNAN.

2. MEETING WITH MARAD OFFICIALS WAS SIMILARLY EXPLORATORY AND CORDIAL. ALGERIAN OFFICIALS DISCUSSED POLICY REGARDING P.R.17 WAIVERS TO ALLOW ALGERIAN FLAG VESSELS TO CARRY UP TO 50 PER CENT OF EXIMBANK-FINANCED CARGO. ALSO DISCUSSED BRIEFLY WERE POSSIBLE ALGERIAN EXPANSION IN ATLANTIC TRADE AND POSITION OF USG TOWARD 50-50 BILATERAL AGREEMENT REGARDING ALL CARGOES MOVING BETWEEN THE TWO COUNTRIES.

3. PARA 1 OF REFTEL DESCRIBING NOTE NO. 3611 INDICATES GOA STILL HAS MISCONCEPTION OF U.S. SHIPPING POLICY REGARDING GOVERNMENT CARGO PREFERENCE. EMBASSY SHOULD MAKE CLEAR TO MFA THAT MARAD AS SOLE ADMINISTRATOR OF P.R.17 RULES AND WAIVERS GRANTS AND WILL CONTINUE TO GRANT GENERAL WAIVERS OF PROVISIONS OF P.R.17 TO PERMIT ALGERIAN-FLAG VESSELS TO CARRY UP TO 50 PER CENT OF ALL CARGOES GENERATED BY EXIMBANK LOANS SO LONG AS ALGERIA LIMITED OFFICIAL USE

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DOES NOT DISCRIMINATE AGAINST U.S. FLAG SHIPPING. FYI. SHOULD GOA TAKE STEPS TO RESERVE COMMERCIAL CARGO FOR GOA-FLAG SHIPS, THEY RISK DENIAL OF P.R.17 WAIVER. END FYI. THE CARGO PREFERENCE ACT, P.L.664, RESERVES 50 PER CENT OF OTHER USG-OWNED OR FINANCED CARGOES (AID, P.L.480) TO US-FLAG CARRIERS AND LEAVES 50 PER CENT AVAILABLE TO ALGERIAN-FLAG OR OTHER CARRIERS. COMMERCIAL CARGOES ARE NOT REPEATEDLY RESERVED AND ARE AVAILABLE ON A COMPETITIVE BASIS TO ALGERIAN-FLAG VESSELS. MARAD MADE THIS CLEAR TO HENNI AND MOKHTAR ON THEIR VISIT. THERE IS NO U.S. LAW THAT RESTRICTS CNAN'S SHARE OF U.S. COMMERCIAL CARGO.

4. MARAD FURTHER NOTES THAT ONE GENERAL WAIVER FOR DRAVO CORPORATION PROJECT IS CURRENTLY BEING PROCESSED AND HAS NOT YET BEEN GRANTED. WAIVER OF P.R.17 HAS BEEN GRANTED DURING 1976 FOR EXIMBANK CREDIT NO. 5859-GTEI-SONELEC TO ALLOW ALGERIAN-FLAG VESSELS TO CARRY UP TO 50 PER CENT OF CARGO FINANCED. ALSO MARAD

HAS GRANTED BLANKET STATUTORY WAIVER DUE TO NON-
AVAILABILITY OF US-FLAG VESSELS WHICH HAS ALLOWED
ALGERIAN-FLAG VESSELS TO CARRY 100 PER CENT OF THE CARGO
FINANCED UNDER EXIMBANK CREDIT NO. 5847--C.S. GREEN,
FREIGHT FORWARDERS.

5. REGARDING PARA 3, REFTEL, EMBASSY SHOULD BE AWARE
EXIMBANK HAS NO ROLE IN ADMINISTERING P.R. 17 RULES OR
WAIVERS. P.R.17 STATES USG-FINANCED CARGO SHALL BE
CARRIED EXCLUSIVELY IN U.S. VESSELS UNLESS U.S. VESSELS
ARE NOT AVAILABLE IN SUFFICIENT NUMBERS, SUFFICIENT
TONNAGE CAPACITY, NECESSARY SAILING SCHEDULE OR AT
REASONABLE RATES. ACCORDING TO INTERPRETATION OF P.R.17
BY ATTORNEY GENERAL, OPIN. OF JUNE 5, 1934, WAIVER OF
UP TO 50 PER CENT OF THE 100 PER CENT U.S.-FLAG REQUIRE-
MENT UNDER P.R.17 IS ALLOWED SINCE THE "REQUIREMENT"
IS A "RULE OF GUIDANCE" TO BE APPLIED IF FEASIBLE.
FOLLOWING ATTORNEY GENERAL OPINION, THE 100 PER CENT US-
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FLAG REQUIREMENT MAY BE WAIVED BY MARAD IN TWO TYPES OF
SITUATIONS: (1) STATUTORY WAIVER - WHEN MARAD FINDS AND
CERTIFIES US-FLAG NON-AVAILABILITY; (2) GENERAL WAIVERS -
AUTHORIZING SHARING BY RECIPIENT NATION VESSELS OF UP TO
50 PER CENT OF OCEAN FREIGHT OR VALUATION OF CARGO
FINANCED UNDER THE CREDIT. EMBASSY SHOULD MAKE CLEAR TO
GOA AUTHORITIES THAT NO MORE THAN 50 PER CENT
CARRIAGE OF SUCH CARGO MAY BE WAIVED.

6. ALGERIA ALSO RECEIVES SMALL AMOUNTS OF P.L.480
CARGO, WHICH FALLS UNDER CARGO PREFERENCE ACT, P.L.664
OF 1954. UNDER P.L.664, AT LEAST 50 PER CENT OF GROSS
TONNAGE OF USG-OWNED OR FINANCED EQUIPMENT, MATERIALS
OR COMMODITIES SHALL BE TRANSPORTED ON U.S.-FLAG COM-
MERCIAL VESSELS AVAILABLE AT FAIR AND REASONABLE RATES.
IN SUCH CASE, FOREIGN RECIPIENTS MAY SHIP UP TO 50 PER
CENT OF CARGO ON FOREIGN-FLAG VESSELS OF ANY NATION WITH-
OUT OBTAINING PERMISSION BY WAIVER AS UNDER P.R.17.

7. EMBASSY CAN USE FOLLOWING INFORMATION TO BRIEF GOA
OFFICIALS REGARDING CURRENT POLICY ON POOLING AGREEMENTS:
(A) UNDER SOME CIRCUMSTANCES, U.S. LAW PERMITS POOLING
ARRANGEMENTS AMONG SHIPPING LINES, PROVIDED THE POOL IS
REVIEWED AND APPROVED BY THE FEDERAL MARITIME COMMISSION;

(B) IT IS THE DEPARTMENT'S (AND FMC'S) GENERAL VIEW,
HOWEVER, THAT CARGO-SHARING (POOLING) AGREEMENTS SHOULD
BE AVOIDED. THIS CONCLUSION IS BASED ON THE PREMISE
THAT COMPETITION AMONG SHIPPING LINES BENEFITS TRADING
INTERESTS, AND THAT CARGO-SHARING SCHEMES ARE, IN THE
LONG RUN, DETRIMENTAL TO THOSE PROTECTED. IN ADDITION,

THE DEPARTMENT SEES GREAT VALUE IN COMMERCIAL NEGOTIATIONS AS THE BASIS FOR ARRANGEMENTS BETWEEN SHIPPERS AND CARRIERS.

(C) IN SOME CIRCUMSTANCES, HOWEVER, THE POOLS MAY
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AFFORD BENEFITS WHICH RENDER THEM IN THE PUBLIC INTEREST, NOTWITHSTANDING THEIR ANTI-COMPETITIVE EFFECTS. U.S. LEGISLATION CONTEMPLATES THIS POSSIBILITY, AND ESTABLISHED THE FEDERAL MARITIME COMMISSION AS A MEANS TO ASSURE THAT POOLING ARRANGEMENTS TRULY SERVE THE BROADER PUBLIC INTEREST. SHOULD CNAN AND OTHER LINES IN THE U.S.-ALGERIA TRADE CONCLUDE A POOLING AGREEMENT, THEY WOULD HAVE TO DEMONSTRATE TO THE FMC THAT THE AGREEMENT WAS IN THE PUBLIC INTEREST.

(D) THE QUESTION WHETHER PARTICULAR CARGO POOLING ARRANGEMENTS LEAD TO BENEFITS WHICH MAKE THEM IN THE PUBLIC INTEREST, EVEN THOUGH THEY MAY HAVE ANTI-COMPETITIVE EFFECTS, MUST BE DETERMINED ON A CASE-BY-CASE BASIS BY THE FMC UNDER SECTION 15 OF THE SHIPPING ACT OF 1916. EACH AGREEMENT MUST BE CONSIDERED IN LIGHT OF ALL OF THE CONSIDERATIONS WHICH THE LAW REQUIRES THE FMC TO TAKE INTO ACCOUNT, INCLUDING THE EFFECTS OF THE AGREEMENT ON COMPETITION AND ON THE PUBLIC INTEREST GENERALLY. WE RECOGNIZE THAT SUCH JUDGMENTS INVOLVE A VARIETY OF FACTORS, HIGH IN IMPORTANCE BEING THAT OF FOREIGN RELATIONS.

8. EMBASSY ALSO SHOULD MAKE CLEAR TO MFA OFFICIALS AND TO HENNI AND MOKHTAR THAT IN FUTURE, DEPARTMENT OF STATE, OFFICE OF MARITIME AFFAIRS SHOULD BE INITIAL CONTACT POINT FOR DISCUSSIONS OF SUBJECTS REGARDING MARITIME RELATIONS BETWEEN THE US AND ALGERIAN GOVERNMENTS.

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